रजिस्ट्री सं० डी-(डी)-72 REGISTERED No. D-(D)-72

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 2
PART II—Section 2
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 63] नई दिल्ली, वृहस्पतिवार, अगस्त 26, 1976/भाद्र 4, 1898
No. 63] NEW DELHI, THURSDAY, AUGUST 26, 1976/BHADRA 4, 1898

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on 26th August, 1976:—

BILL NO. 88 OF 1976

A Bill to provide for the further extension of the duration of the present Legislative Assembly of the State of Kerala.

BE it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:—

1. This Act may be called the Kerala Legislative Assembly (Extension of Duration) Second Amendment Act, 1976. Short title.

Further extension of duration of the Kerala Legislative Assembly and amendment of Act 33 of 1975.

2. The period of five years [being the period for which the Legislative Assembly of a State may, under clause (1) of article 172 of the Constitution, continue from the date appointed for its first meeting] in relation to the Legislative Assembly of the State of Kerala, which was extended for a period of six months by the Kerala Legislative Assembly (Extension of Duration) Act, 1975 and for a further period of six months by the Kerala Legislative Assembly (Extension of Duration) Amendment Act, 1976, is hereby extended for a further period of six months and accordingly in section 2 of that Act, for the words "one year", wherever they occur, the words "eighteen months" shall be substituted. 46 of 1976.

STATEMENT OF OBJECTS AND REASONS

The duration of the Kerala Legislative Assembly, as extended by the Kerala Legislative Assembly (Extension of Duration) Amendment Act, 1976 (46 of 1976), is due to expire on the 21st October, 1976. The circumstances in which the duration of the Kerala Legislative Assembly was extended as aforesaid still continue to prevail. It is, therefore, felt that it is not desirable to hold the elections now. It is proposed that the duration of the existing Legislative Assembly of Kerala may be extended for a further period of six months with effect from the 22nd October, 1976.

2. Under the proviso to clause (1) of article 172 of the Constitution, Parliament has the power to extend by law, while a Proclamation of Emergency is in operation, the duration of the Legislative Assembly of a State for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

3. The Bill seeks to give effect to the object mentioned above.

NEW DELHI;
The 23rd August, 1976.

H. R. GOKHALE.

BILL No. 85 OF 1976

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Forty-third Amendment) Act, 1976. Short title.

2. In article 316 of the Constitution, in clause (2), for the words "sixty years", the words "sixty-two years" shall be substituted. Amendment of article 316.

STATEMENT OF OBJECTS AND REASONS

Article 316(2) of the Constitution provides that the Chairman and Members of a State Public Service Commission or Joint Commission shall retire at 60 or hold office for a term of six years from the date on which they enter service, whichever is earlier. This was the position when the Constitution came into force. Subsequently, while the age of retirement of the High Court Judges was raised to 62, that of the Chairman and the Members of the State Public Service Commissions remained unchanged.

The same article provides that one-half of the members of every Public Service Commission shall be employees of the Government of India or the Government of a State. The age of retirement of Government employees was 55 originally but was later raised to 58 in the case of All-India Services, Central Government servants and the Government servants of several States. Membership of the Commission is no attraction, therefore, to them, as they will have only two years to serve on the Commission which position is not desirable from the point of view of the efficient functioning of the Commission.

Academicians like University Professors are eligible for appointment to the State Public Service Commissions. The age of retirement of University Professors has been recently raised to 60. It will not be attractive for these academicians to serve on a Public Service Commission if the age of retirement remains sixty. The Chairman/Members of a State Public Service Commission are forbidden to serve under the Government of India or a State Government after retirement. Consequently, no eminent academician will be eager to accept appointment on the Commission unless the age of retirement is raised to 62.

The proposal is to raise the age of retirement of the Chairman and Members of the State Public Service Commissions to 62. The Bill seeks to give effect to this proposal.

NEW DELHI; OM MEHTA.

The 18th August, 1976.

BILL NO. 86 OF 1976

A Bill further to amend the Fifth Schedule to the Constitution of India.

BE it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Fifth Schedule to the Constitution (Amendment) Act, 1976.

Amendment of the Fifth Schedule.

2. In the Fifth Schedule to the Constitution, in paragraph 6, in sub-paragraph (2),—

(*1*) after clause (*a*), the following clause shall be inserted, namely:—

"(*aa*) increase the area of any Scheduled Area in a State after consultation with the Governor of that State;";

(*2*) after clause (*c*), the following clause shall be inserted, namely:—

"(*d*) rescind, in relation to any State or States, any order or orders made under this paragraph, and in consultation with the Governor of the State concerned, make fresh orders re-defining the areas which are to be Scheduled Areas;".

STATEMENT OF OBJECTS AND REASONS

With a view to intensify tribal development effort in the Fifth Plan, all areas with more than 50 per cent. tribal concentration, besides the existing Scheduled Areas, have been delineated in various States and Union territories. Special programmes have been prepared for these areas under Tribal Sub-Plans. Each State has qualified the level of investment in the Sub-Plan areas from the State Plan. In addition, special Central assistance of Rs. 200 crores has been set apart for tribal development during the Fifth Five Year Plan period

2. According to the new approach, specific programmes are to be prepared for each project area keeping in view its special problems The Sub-Plan also accords highest priority to elimination of exploitation including tackling the problem of land alienation, bonded labour, indebtedness, etc. The Fifth Schedule to the Constitution makes special provision for the administration of tribal areas and provides a broad and flexible frame for effective legal and administrative action. The powers under the Fifth Schedule can be used for effective implementation of developmental programmes and promptly tackling the problem of exploitation in various forms. A review of the Sub-Plan area in States having Scheduled Areas shows that while bulk of the Sub-Plan area is covered under the Fifth Schedule some areas are outside. This presents an anomalous situation since effective simultaneous action cannot be taken throughout the Sub-Plan area. It is, therefore, considered desirable that the area presently covered under the Fifth Schedule may be rationalised so that the Scheduled Area may cover the entire Sub-Plan area in these States.

3. Under paragraph 6(1) of the Fifth Schedule to the Constitution, the President may by order declare any area as a Scheduled Area, and under paragraph 6(2) he may alter the existing boundaries of the Scheduled Areas but by way of rectification alone. In order that the Sub-Plan areas may be declared as Scheduled Areas it is necessary to empower the President to increase the area of any Scheduled Areas in any State. The present Bill seeks to achieve this purpose.

NEW DELHI; K. BRAHMANANDA REDDI.
The 19th August, 1976.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Paragraph 6 of the Fifth Schedule to the Constitution already authorises the President to make orders declaring any area to be a Scheduled Area. It is considered necessary to rationalise the Scheduled Areas so as to cover the entire Sub-Plan area of the various States. This involves the increasing of the Scheduled Areas and re-defining them by rescinding the existing orders and issuing orders afresh in relation to the States.

Clause 2 of the Bill seeks therefore to amend paragraph 6 of the Fifth Schedule to the Constitution so as to empower the President to make orders to—

(*a*) increase the area of any Scheduled Area in a State after consultation with the Governor of that State;

(*b*) rescind, in relation to any State or States, any order or orders made under paragraph 6 and in consultation with the Governor of the State concerned, make fresh orders re-defining the areas which are to be Scheduled Areas.

These pertain to matters already envisaged in the Constitution and the delegation of legislative power is of a normal character.

BILL NO. 84 OF 1976

A Bill further to amend the Central Sales Tax Act, 1956.

BE it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Central Sales Tax (Amendment) Act, 1976.

74 of 1956.

Amendment of section 2.

2. In section 2 of the Central Sales Tax Act, 1956 (hereinafter referred to as the principal Act),—

(*a*) after clause (*a*), the following clauses shall be inserted, namely:—

'(*aa*) "business" includes—

(*i*) any trade, commerce or manufacture, or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern; and

(*ii*) any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern;

(*ab*) "crossing the customs frontiers of India" means crossing the limits of the area of a customs station in which imported goods or export goods are ordinarily kept before clearance by customs authorities.

Explanation.—For the purposes of this clause, "customs station" and "customs authorities" shall have the same meanings as in the Customs Act, 1962;';

52 of 1962.

(*b*) for clause (*b*), the following clause shall be substituted, namely:—

'(*b*) "dealer" means any person who carries on (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods, directly or indirectly, for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, and includes—

(*i*) a local authority, a body corporate, a company, any co-operative society or other society, club, firm, Hindu undivided family or other association of persons which carries on such business;

(*ii*) a factor, broker, commission agent, *del credere* agent, or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of buying, selling, supplying or distributing, goods belonging to any principal whether disclosed or not; and

(*iii*) an auctioneer who carries on the business of selling or auctioning goods belonging to any principal, whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal.

Explanation 1.—Every person who acts as an agent, in any State of a dealer residing outside that State and buys, sells supplies, or distributes, goods in the State or acts on behalf of such dealer as—

(*i*) a mercantile agent as defined in the Sale of Goods Act, 1930, or

3 of 1930.

(*ii*) an agent for handling of goods or documents of title relating to goods, or

(*iii*) an agent for the collection or the payment of the sale price of goods or as a guarantor for such collection or payment,

and every local branch or office in a State of a firm registered outside that State or a company or other body corporate, the principal office or headquarters whereof is outside that State, shall be deemed to be a dealer for the purposes of this Act.

Explanation 2.—A Government which, whether or not in the course of business, buys, sells, supplies or distributes, goods, directly or otherwise, for cash or for deferred payment or for

commission, remuneration or other valuable consideration, shall, except in relation to any sale, supply or distribution of surplus, un-serviceable or old stores or materials or waste products or obsolete or discarded machinery or parts or accessories thereof, be deemed to be a dealer for the purposes of this Act;'.

Amendment of section 5.

3. In section 5 of the principal Act, after sub-section (2), the following sub-section shall be inserted, and shall be deemed to have been inserted with effect from the 1st day of April, 1976, namely:—

"(3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.".

Amendment of section 6.

4. In section 6 of the principal Act, in sub-section (1), the following proviso shall be inserted, and shall be deemed to have been inserted, with effect from the 1st day of April, 1976, namely:—

"Provided that a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of sub-section (3) of section 5, is a sale in the course of export of those goods out of the territory of India.".

Amendment of section 7.

5. In section 7 of the principal Act, for sub-section (3B), the following sub-sections shall be substituted, namely:—

"(3B) No dealer shall be required to furnish any security under sub-section (2A) or any security or additional security under sub-section (3A) unless he has been given an opportunity of being heard

(3BB) The amount of security which a dealer may be required to furnish under sub-section (2A) or sub-section (3A) or the aggregate of the amount of such security and the amount of additional security which he may be required to furnish under sub-section (3A), by the authority referred to therein, shall not exceed—

(a) in the case of a dealer other than a dealer who has made an application, or who has been registered in pursuance of an application, under sub-section (2), a sum equal to the tax payable under this Act, in accordance with the estimate of such authority, on the turnover of such dealer for the year in which such security or, as the case may be, additional security is required to be furnished; and

(b) in the case of a dealer who has made an application, or who has been registered in pursuance of an application, under sub-section (2), a sum equal to the tax leviable under this Act, in accordance with the estimate of such authority on the sales to such dealer in the course of inter-State trade or commerce in the year in which such security or, as the case may be, additional security is required to be furnished, had such dealer been not registered under this Act.".

Amendment of section 9.

6. In section 9 of the principal Act,—

(a) in sub-section (1), for the proviso, the following proviso shall be substituted, namely:—

"Provided that, in the case of a sale of goods during their movement from one State to another, being a sale subsequent to

the first sale in respect of the same goods and being also a sale which does not fall within sub-section (2) of section 6, the tax shall be levied and collected—

(a) where such subsequent sale has been effected by a registered dealer, in the State from which the registered dealer obtained or, as the case may be, could have obtained, the form prescribed for the purposes of clause (a) of sub-section (4) of section 8 in connection with the purchase of such goods, and

(b) where such subsequent sale has been effected by an unregistered dealer, in the State from which such subsequent sale has been effected.";

(b) in sub-section (2), before the words "compounding of offences", the words "charging or payment of interest," shall be inserted and shall be deemed always to have been inserted;

(c) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) All the provisions relating to offences and penalties (including provisions relating to penalties in lieu of prosecution for an offence or in addition to the penalties or punishment for an offence but excluding the provisions relating to matters provided for in sections 10 and 10A) of the general sales tax law of each State shall, with necessary modifications, apply in relation to the assessment, re-assessment, collection and the enforcement of payment of any tax required to be collected under this Act in such State or in relation to any process connected with such assessment, re-assessment, collection or enforcement of payment as if the tax under this Act were a tax under such sales tax law.".

Amendment of section 14

7. In section 14 of the principal Act, with effect from the 1st day of September, 1976,—

(a) clause (i) shall be re-numbered as clause (ia) and before clause (ia) as so re-numbered, the following clause shall be inserted, namely:—

"(i) cereals, that is to say,—

(i) paddy (*Oryza sativa L.*);

(ii) rice (*Oryza sativa L.*);

(iii) wheat (*Triticum vulgare, T. compactum, T. sphaerococcum, T. durum, T. aestivum L., T. dicoccum*);

(iv) *jowar* or milo (*Sorghum vulgare Pers*);

(v) *bajra* (*Pennisetum typhoideum L.*);

(vi) maize (*Zea mays L.*);

(vii) *ragi* (*Eleusine coracana Gaertn.*);

(viii) *kodon* (*Paspalum scrobiculatum L.*);

(ix) *kutki* (*Panicum miliare L.*);

(x) barley (*Hordeum vulgare L.*);";

(*b*) after clause (*iib*), the following clause shall be inserted, namely:—

"(*iic*) crude oil, that is to say, crude petroleum oils and crude oils obtained from bituminous minerals (such as shale, calcareous rock, sand), whatever their composition, whether obtained from normal or condensation oil-deposits or by the destructive distillation of bituminous minerals and whether or not subjected to all or any of the following processes:—

(*1*) decantation;

(*2*) de-salting;

(*3*) dehydration;

(*4*) stabilisation in order to normalise the vapour pressure;

(*5*) elimination of very light fractions with a view to returning them to the oil-deposits in order to improve the drainage and maintain the pressure;

(*6*) the addition of only those hydrocarbons previously recovered by physical methods during the course of the above-mentioned processes;

(*7*) any other minor process (including addition of pour point depressants or flow improvers) which does not change the essential character of the substance;";

(*c*) after clause (*vi*), the following clause shall be inserted, namely:—

"(*via*) pulses, that is to say,—

(*i*) gram or *gulab* gram (*Cicerarietinum L.*);

(*ii*) *tur* or *arhar* (*Cajanus cajan*);

(*iii*) *moong* or green gram (*Phaseolus aureus*);

(*iv*) *masur* or lentil (*Lens esculenta Moench, Lens culinaris Medic.*);

(*v*) *urad* or black gram (*Phaseolus mungo*);

(*vi*) *moth* (*Phaseolus aconitifolius Jacq*);

(*vii*) *lakh* or *khesari* (*Lathyrus sativus L.*);".

Amendment of section 15.

8. In section 15 of the principal Act, after clause (*b*), the following clauses shall be inserted, with effect from the 1st day of September, 1976 namely:—

"(*c*) where a tax has been levied under that law in respect of the sale or purchase inside the State of any paddy referred to in sub-clause (*i*) of clause (*i*) of section 14, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on such paddy;

(*d*) each of the pulses referred to in clause (*via*) of section 14, whether whole or separated, and whether with or without husk, shall be treated as a single commodity for the purposes of levy of tax under that law.".

Validation.

9. (1) The provisions of section 9 of the principal Act shall have effect, and shall be deemed always to have had effect, in relation to the period commencing on the 5th day of January, 1957, and ending with the date immediately preceding the date of commencement of this Act as if that section also provided—

(a) that all the provisions relating to penalties (including provisions relating to penalties in lieu of prosecution for an offence or in addition to the penalties or punishment on conviction for an offence but excluding the provisions relating to matters provided for in sections 10 and 10A of the principal Act and the provisions relating to offences) of the general sales tax law of each State shall, with necessary modifications, apply in relation to—

(i) the assessment, re-assessment, collection and enforcement of payment of any tax required to be collected under the principal Act in such State; and

(ii) any process connected with such assessment, re-assessment, collection or enforcement of payment; and

(b) that for the purpose of the application of the provisions of such law, the tax under the principal Act shall be deemed to be tax under such law.

(2) Notwithstanding anything contained in any judgment, decree or order of any court or tribunal or other authority, all penalties under the general sales tax law of any State imposed or purporting to have been imposed in pursuance of the provisions of section 9 of the principal Act, and all proceedings, acts or things taken or done for the purpose of, or in relation to, the imposition or collection of such penalties, before the commencement of this Act shall, for all purposes, be deemed to be and to have always been imposed, taken or done as validly and effectively as if the provisions of sub-section (1) had been in force when such penalties were imposed or proceedings or acts or things were taken or done and, accordingly,—

(a) no suit or other proceedings shall be maintained or continued in or before any court or any tribunal or other authority for the refund of any amount received or realised by way of such penalty;

(b) no court, tribunal or other authority shall enforce any decree or order directing the refund of any amount received or realised by way of such penalty;

(c) where any amount which had been received or realised by way of such penalty had been refunded before the commencement of this Act and such refund would not have been allowed if the provisions of sub-section (1) had been in force on the date on which the order for such refund was passed, the amount so refunded may be recovered as an arrear of tax under the principal Act;

(d) any proceeding, act or thing which could have been validly taken, continued or done for the imposition of such penalty at any time before the commencement of this Act if the provisions of sub-section (1) had then been in force but which had not been taken, continued or done, may after such commencement be taken, continued or done.

(3) Nothing in sub-section (2) shall be construed as preventing any person,—

(a) from questioning the imposition or collection of any penalty or any proceedings, act or thing in connection therewith; or

(b) from claiming any refund,

in accordance with the provisions of the principal Act read with sub-section (1).

Explanation.—In computing the period of limitation, if any, for questioning as provided in clause (a) or for claiming as provided in clause (b), the period commencing on the 27th day of February, 1975 and ending with the date of commencement of this Act shall be excluded.

(4) Any interest charged or paid or purporting to have been charged or paid, and any proceeding, act or thing taken or done or purporting to have been taken or done for charging or paying any interest, under the provisions of the general sales tax law of any State read with section 9 of the principal Act, before the commencement of this Act, shall be deemed to be and to have always been as validly charged, paid, taken or done as if the amendment made by clause (b) of section 6 had been in force when such interest was charged or paid or when such proceeding, act or thing was taken or done.

Explanation.—For the purposes of this section, "general sales tax law" shall have the same meaning as in the principal Act.

STATEMENT OF OBJECTS AND REASONS

The Central Sales Tax Act, 1956, formulates the principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of import into, or export from, India. The Act also provides for the levy, assessment and collection of tax on sales of goods in the course of inter-State trade or commerce. Further, the Act declares certain goods to be of special importance in inter-State trade or commerce and specifies the restrictions and conditions to which State laws relating to sales tax shall be subject in regard to the levy of tax on the sale or purchase of such goods.

2. According to section 5(1) of the Central Sales Tax Act, a sale or purchase of goods can qualify as a sale in the course of export of the goods out of the territory of India only if the sale or purchase has either occasioned such export or is by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India. The Supreme Court has held (*vide Mohd. Serajuddin* vs. *State of Orissa*, 36 *S.T.C.*, 136) that the sale by an Indian exporter from India to the foreign importer alone qualifies as a sale which has occasioned the export of the goods. According to the Export Control Orders, exports of certain goods can be made only by specified agencies such as the State Trading Corporation. In other cases also manufacturers of goods, particularly in the small scale and medium sectors, have to depend upon some experienced export house for exporting the goods because special expertise is needed for carrying on export trade. A sale of goods made to an export canalising agency such as the State Trading Corporation or to an export house to enable such agency or export house to export those goods in compliance with an existing contract or order is inextricably connected with the export of the goods. Further, if such sales do not qualify as sales in the course of export, they would be liable to State sales tax and there would be a corresponding increase in the price of the goods. This would make our exports uncompetitive in the fiercely competitive international markets. It is, therefore, proposed to amend, with effect from the beginning of the current financial year, section 5 of the Central Sales Tax Act to provide that the last sale or purchase of any goods preceding the sale or purchase occasioning export of those goods out of the territory of India shall also be deemed to be in the course of such export if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for, or in relation to, such export.

3. Sub-section (2) of section 9 of the Central Sales Tax Act empowers the State sales tax authorities to assess, re-assess, collect and enforce payment of Central sales tax. The sub-section also authorises the authorities under the State sales tax laws to exercise all the powers which they have under those laws (including, *inter alia*, the power to impose penalties) for the purposes of the Central Sales Tax Act also. In *Khemka & Co. (Agencies) Private Ltd.* vs. *State of Maharashtra*

(35 S.T.C., 571), the Supreme Court, by a majority of 3 : 2, held that the provisions of the State sales tax laws as to penalties do not apply for purposes of the Central sales tax. In view of this judgment, the State Governments are faced with the problem of having to refund the amounts collected in the past by way of penalties. The judgment has also resulted in a vacuum being created in regard to levy of penalties. It is, therefore, necessary to amend section 9 of the Central Sales Tax Act to provide expressly that the provisions relating to offences and penalties under the general sales tax law of each State shall, with necessary modifications, apply in relation to the assessment, re-assessment, collection and the enforcement of tax under the Central Sales Tax Act. It is also necessary to validate the penalties which have been levied in the past, for the purposes of the Central Sales Tax Act, on the basis of the provisions of the State sales tax laws.

4. It is proposed to avail of the present opportunity to declare crude oil and certain cereals and pulses as goods of special importance in the course of inter-State trade or commerce and to make certain other amendments to remove difficulties which have been experienced in the administration of this Act.

5. The Bill seeks to achieve the above objects. The notes on clauses explain the provisions of the Bill.

NEW DELHI;
The 18th August, 1976. PRANAB MUKHERJEE.

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND 274 OF THE CONSTITUTION OF INDIA

[Copy of letter No. 23/3/75-ST (Vol. III), dated the 21st August, 1976 from Shri Pranab Kumar Mukherjee, Minister of Revenue and Banking to the Secretary-General, Lok Sabha.]

The President having been apprised of the subject matter of the Bill further to amend the Central Sales Tax Act, 1956 has been pleased to recommend in pursuance of clause (1) of article 117 and clause (1) of article 274 of the Constitution of India, the introduction of the Bill in Lok Sabha.

Notes on clauses

Clause 2.—Sub-clause (a) seeks to insert definitions of the expressions "business" and "crossing the customs frontiers of India".

The definition of "business" is for making it clear that a dealer carrying on a business would be liable to tax under this Act whether he carries on such business with or without profit motive.

The expression "customs frontiers of India" is used in section 5 of the Act. In the absence of a definition, "customs frontiers" has been interpreted to be co-terminus with the extent of the territorial waters. This gives rise to practical difficulties as in many cases it would be difficult to determine the question whether at the time of the sale or purchase the goods have entered or crossed the territorial waters. The actual checking of the goods takes place in the customs station and not at the edge of the territorial waters. Hence, it is proposed to define the exprssion "crossing the customs frontiers of India" as meaning "crossing the limits of the area of a customs station in which imported goods or export goods are ordinarily kept before clearance by customs authorities".

Sub-clause (b) seeks to substitute the existing definition of the term "dealer" by a new comprehensive definition.

Clause 3.—This clause seeks to insert with retrospective effect from 1-4-76 a new sub-section (3) in section 5. The new sub-section provides that the last sale or purchase of any goods preceding the sale or purchase occasioning export of those goods out of the territory of India shall also be deemed to be in the course of such export if such last sale or purchase took place after, and was for the purpose of complying with the agreement or order for, or in relation to such export.

Clause 4.—This clause seeks to amend, with retrospective effect from 1-4-76, sub-section (1) of section 6 to provide that the sales of goods which qualify as sales in the course of export out of the territory of India under sub-section (3) as proposed to be inserted in section 5 by clause 3 of the Bill shall not be liable to Central sales tax.

Clause 5.—This clause seeks to amend section 7 to enable the amount of security to be demanded being computed in the case of a dealer who applies for registration under section 7(2) of the Act. The amount of security in such a case shall not exceed the sum equal to the tax which would have been levied on sales to such dealer in the course of inter-State trade or commerce if such dealer had not been registered under the Act. The security cannot be demanded unless the dealer has been given an opportunity of being heard.

Clause 6.—Sub-clause (a) of this clause seeks to plug a lacuna and provide that where a subsequent sale not exempt from tax under section 6(2) of the Act is made by an unregistered dealer, the tax will be collected in the State from which such subsequent sale is effected.

Sub-clause (b) seeks to amend sub-section (2) of section 9 retrospectively to make it clear that provisions relating to charging or payment of interest in the general sales tax law of the State are applicable for the purposes of the Central Sales Tax Act.

Sub-clause (c) seeks to insert a new sub-section (2A) in section 9 to provide that provisions relating to offences and penalties (including provisions relating to penalties in lieu of prosecution for an offence or in addition to the penalties or punishment for an offence but excluding the provisions relating to matters provided for in sections 10 and 10A) of the general sales tax law of each State shall with necessary modifications apply in relation to the assessment, re-assessment, collection and enforcement of payment of any tax required to be collected under this Act.

Clause 7.—This clause seeks to amend with effect from 1-9-76 section 14 of the Act to declare "crude oil" and certain cereals and pulses as goods of special importance in inter-State trade or commerce.

Clause 8.—This clause seeks to insert with effect from 1-9-76 two new clauses (c) and (d) in section 15 of the Act to make it clear that there will be no double taxation on paddy and rice produced from such paddy and that pulses whether whole or separated and whether with or without husk shall be treated as a single commodity for the purposes of levy of sales tax by States.

Clause 9.—This clause seeks to make applicable all the provisions relating to penalties (including provisions relating to penalties in lieu of prosecution for an offence or in addition to the penalties or punishment on conviction for an offence but excluding the provisions relating to matters provided for in sections 10 and 10A of the Act and the provisions relating to offences) of the general sales tax law of each State for the purpose of assessment, re-assessment, collection and enforcement of payment of any tax required to be collected under this Act in the past. The clause also provides for the validation of any penalties imposed, proceedings, acts or things taken or done, interest charged or paid or purporting to have been charged or paid in the past.

It has been made clear that a person shall not be prevented from questioning the imposition or collection of any penalty or any proceeding, act or thing in connection therewith or from claiming any refund in accordance with the provisions of the Act read with the provisions of sub-clause (a) of this clause. It has also been provided that in computing the period of limitation, if any, the period commencing on the 27th day of February, 1975 (being the date on which the Supreme Court delivered its judgment in Khemka's case) and ending with the date of commencement of this Act shall be excluded.

BILL NO. 87 OF 1976

A Bill to provide for the authorisation of appropriation of money out of the Consolidated Fund of India to meet the amount spent on a service during the financial year ended on the 31st day of March, 1974 in excess of the amount granted for that service and for that year.

BE it enacted by Parliament in the Twenty-seventh Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Appropriation (No. 6) Act, 1976.

Issue of Rs. 1,305 out of the Consolidated Fund of India to meet an excess expenditure for the year ended on the 31st March, 1974.

2. From and out of the Consolidated Fund of India, the sum of one thousand three hundred and five rupees specified in column 3 of the Schedule shall be deemed to have been authorised to be paid and applied to meet the amount spent for defraying the charges in respect of the service specified in column 2 of the Schedule during the financial year ended on the 31st day of March, 1974, in excess of the amount granted for that service and for that year.

Appropriation.

3. The sum deemed to have been authorised to be paid and applied from and out of the Consolidated Fund of India under this Act shall be deemed to have been appropriated for the service and purpose expressed in the Schedule in relation to the financial year ended on the 31st day of March, 1974.

THE SCHEDULE

(*See* sections 2 and 3)

1	2	3		
		Excess		
No. of Vot	Service and purpose	Voted by Parliament	Charged on the Consolidated Fund	Total
		Rs.	Rs.	Rs.
49	Police . . . Revenue	..	*1,305*	1,305
	TOTAL	..	*1,305*	1,305

STATEMENT OF OBJECTS AND REASONS

This Bill is introduced in pursuance of article 114(1) of the Constitution of India read with article 115 thereof, to provide for the appropriation out of the Consolidated Fund of India of the moneys required to meet the expenditure incurred in excess of the appropriations charged on the Fund and the grants made by the Lok Sabha for expenditure of the Central Government, excluding Railways, for the financial year ended on the 31st day of March, 1974.

SUSHILA ROHATGI.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of letter No. F5(57)-B(SE)/76, dated the 19th August, 1976 from Shrimati Sushila Rohatgi, Deputy Minister in the Ministry of Finance to the Secretary-General, Lok Sabha.]

The President having been informed of the subject matter of the proposed Bill to provide for the authorisation of appropriation of money out of the Consolidated Fund of Inida to meet the amount spent on a service during the financial year ended on the 31st day of March, 1974, in excess of the amount granted for that service and for that year recommends under clauses (1) and (3) of article 117 of the Constitution, read with clause (2) of article 115 thereof, the introduction of the Appropriation (No. 6) Bill, 1976, in Lok Sabha and also recommends to Lok Sabha the consideration of the Bill.

S. L. SHAKDHER,
Secretary-General.

PRINTED BY THE GENERAL MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 1976